



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: DECEMBER 21, 2022

IN THE MATTER OF:

Appeal Board No. 626737 A

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 626736 A and 626737 A, the Appeal Board, on its motion pursuant to Labor Law

§ 534, has reopened and reconsidered the decisions of the Appeal Board filed

August 18, 2021, which reversed the decisions of the Administrative Law Judge, insofar as appealed from, and sustained the initial determinations holding the claimant ineligible to receive benefits, effective February 17, 2020, on the basis that the claimant did not comply with reporting requirements; and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$3,600.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and \$1,638.00 in Pandemic Unemployment Assistance (PUA) benefits recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a).

Upon consideration of the entire record, the Board makes the following

**FINDINGS OF FACT:** The claimant is a United States citizen. She has her own business, incorporated as an S Corp in 2018, involved in planning and executing events in New York for multi-national business clients. A company with headquarters in Paris, France, is the source of 90 percent of the claimant's work. The claimant's work is remote in nature. She is authorized to live and work in France pursuant to a visa granted to her in July

2019. She splits her time between living in New York and living in France. The

claimant traveled to France for the purpose of obtaining clients for her business, arriving on February 17, 2020.

The claimant planned to return to the United States on April 10, 2020. Around the middle of March 2020, she was notified that her flight was canceled due to the COVID-19 pandemic and flight restrictions, with no indication when she might be able to get a flight back to the United States. The claimant spoke to a Department of Labor representative and was told to just apply for benefits and "see what happens". She filed a claim for regular unemployment insurance benefits online on April 4, 2020 and followed up with the Department of Labor by phone. She was later advised that she was not eligible for regular unemployment insurance benefits and filed a claim for Pandemic Unemployment Assistance (PUA) on April 9, 2020. On June 6, 2020, as well as two times later, the claimant received an email containing a certification form from the Department of Labor. On June 24, 2020, the claimant completed this form and certified for benefits for the week ending March 8, 2020 through the week ending May 10, 2020. For the period of the week ending March 15, 2020 through the week ending May 10, 2020 she indicated that she was eligible for benefits.

The claimant received benefits beginning with the week ending March 15, 2020. During the period in issue, she received \$3,600 in Federal Pandemic Unemployment Compensation (FPUC) benefits and \$1,638 in Pandemic Unemployment Assistance (PUA) benefits.

The claimant returned to the United States on December 17, 2020, leaving France that day.

OPINION: The credible evidence establishes that the claimant was in France for the purpose of obtaining clients for her business during the period in issue. It is well settled that a claimant who is outside of a jurisdiction which is not part of the Interstate Benefits Payment Plan ("the Plan") is not able to comply with reporting requirements (See Appeal Board No. 577668). The Plan covers the fifty states, the District of Columbia, various United States territories, and Canada. France is not a signatory to the Plan. Therefore, the claimant was ineligible to receive benefits during her visit to France. However, regulations provide that a failure to report may be excused if good cause for the failure is shown. (12 NYCRR 473.3(f)). The Court has held that "[w]hile failure to comply with the reporting requirements can be excused for good cause shown, this is a factual question for the Board to resolve" (Matter of Inatomi, 116 AD3d 1332 [3d Dept 2014]). Good cause must include an

assessment of why the claimant was unable to report.

In our earlier decision, we failed to consider whether the claimant established good cause for her failure to comply with reporting requirements. In the case at hand, the claimant was present in France due to work and could not return to the United States because her flight was canceled due to the COVID-19 pandemic. In addition, it has not been shown that the claimant could have obtained a flight to return to the United States any earlier than December 17, 2020. The claimant had spoken with a representative of the Department of Labor who advised the claimant to apply for benefits and "see what happens". Further, the Department of Labor sent the claimant an email with a form to certify for benefits from the week ending March 8, 2020 through the week ending May 10, 2020. The evidence does not establish that the representatives advised her that she needed to return to the United States to maintain her eligibility. Under these circumstances, due to her inability to return to the United States due to the COVID-19 pandemic coupled with the advice that she received from representatives of the Department of Labor, we conclude that the claimant has shown good cause for her failure to comply with reporting requirements (see Appeal Board Nos. 618308 and 620732 A). As the claimant is therefore eligible to receive benefits, we further conclude that the federal benefits that she received were not overpaid.

DECISION: The decisions of the Appeal Board are rescinded.

The decisions of the Administrative Law Judge are affirmed.

The initial determinations, holding the claimant ineligible to receive benefits, effective February 17,

2020, on the basis that the claimant did not comply with reporting requirements; and charging the claimant with

an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits of \$3,600.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and \$1,638.00 in Pandemic Unemployment Assistance (PUA) benefits recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a), are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER